

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24243  
of John A. and Helen L. McGlothlan  
and Ernest F. Havenga to appropriate  
from Unnamed Stream Tributary to  
West Branch Soquel Creek in Santa  
Cruz County.

Decision 1488

DECISION APPROVING APPLICATION

BY THE BOARD

John A. and Helen L. McGlothlan and Ernest F. Havenga having filed Application 24243 for a permit to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on May 8, 1974; applicants and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Application

1. Application 24243 is for a permit to appropriate 2,000 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic use from unnamed stream tributary to West Branch Soquel Creek in Santa Cruz County. The point of diversion is to be located in the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 3, T10S, R1W, MDB&M.

Protests

2. The application was protested by the City of Capitola (city) on the basis of claimed interference with "prior

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water rights and prior Application 11465". The protest alleged that the proposed diversion would reduce the flow in the creek, especially at Capitola Lagoon, below that necessary to maintain a safe and healthful condition. The protest states that it will be withdrawn if the applicants agree not to divert from May through October or do not divert water when less than three cubic feet per second (cfs) are reaching the lagoon.

A protest was also submitted by the Santa Cruz Angling and Hunting Club. However, no appearance was made at the hearing in support of the protest.

#### The Prior Rights of the City

3. The city holds License 6577 which confirms its right to appropriate not to exceed three cfs from Soquel Creek for recreation and fire protection. Each year the city builds a sand dam across the creek near the ocean to form a freshwater lagoon about three and one-half acres in area which is used for public recreation and as a supplemental source of water for fire protection. The capacity of the lagoon is 14 acre feet (af).

The city's license provides that it shall not give the city "a right as against a subsequent appropriation to an amount by direct diversion in excess of that which is necessary to maintain a full reservoir for fire protection and recreational use".

4. In 1968 the Board adopted Decision 1294 which approved an application to appropriate from Soquel Creek. In response to the city's protest to that application, the Board found that

the fire fighting requirements of the city from the lagoon could be met for a period of 24 hours by drawing down the lagoon only 4.44 af. The city manager testified that to his knowledge nothing had changed in that respect since then (RT 55). He further testified that the fire underwriters require the city to have the capacity to pump at the rate of 2,000 gallons per minute for an eight-hour period from a point in the creek above the lagoon and that this has been accomplished by digging a sump in the creek channel each year to tap the underflow. No difficulty has been experienced in providing the required rate of flow (RT 53, 54).

The hearing record indicates that in all prior years except 1972, which was an unusually dry year, there was outflow from the lagoon to the ocean (RT 55). The lagoon has been posted for several years as unfit for body contact sports as the result of sewage and street runoff entering the lagoon (RT 51, 52). The contamination will occur without regard to the flow in Soquel Creek. A flow of three cfs helps to flush out scum and prevent algae from growing and creating an odor problem (RT 57).

#### Applicants' Project

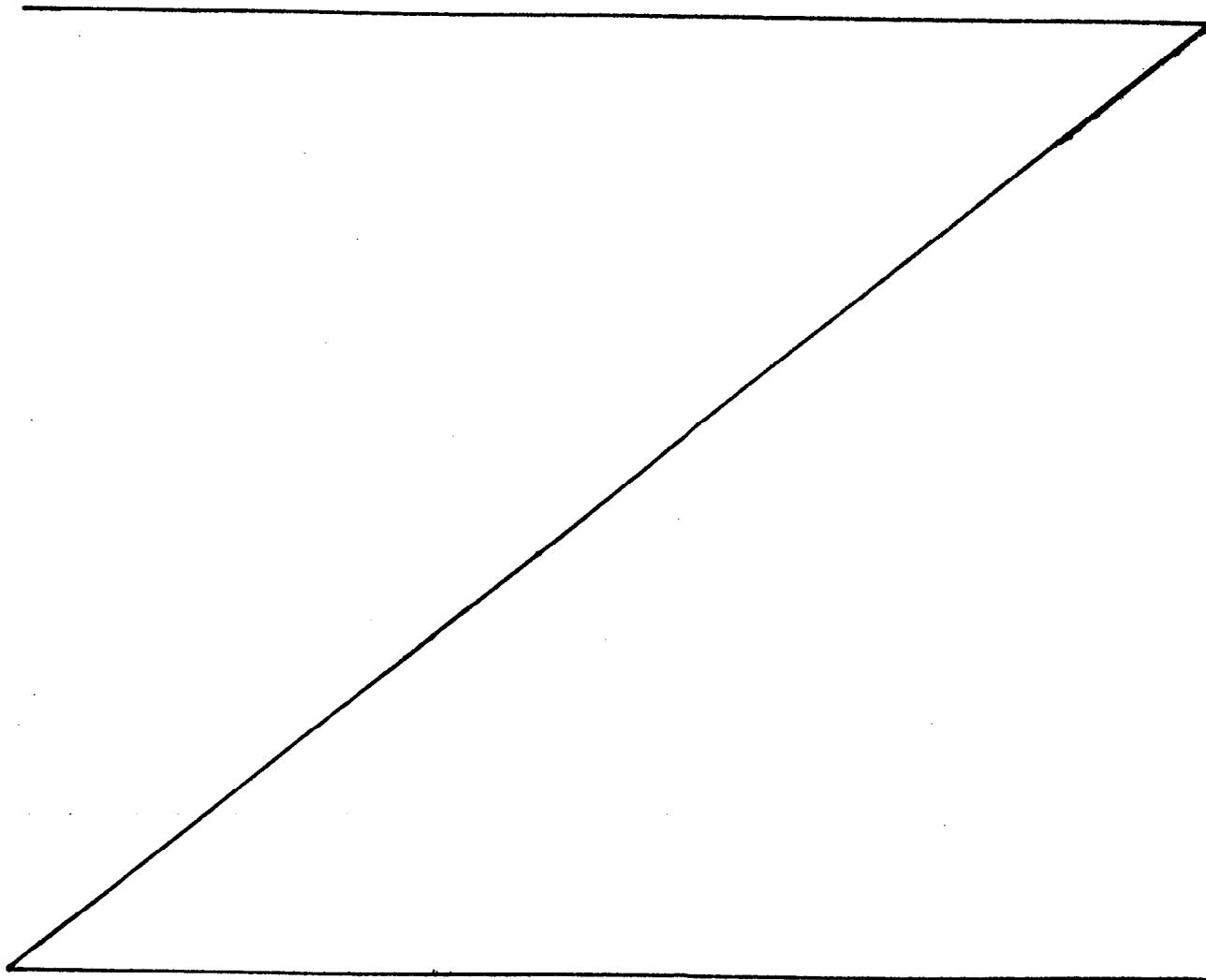
5. Applicants plan to divert water from the source, nine miles upstream from the city, for use at five houses. One house was built 50 years ago and receives water from a spring (RT 80), but the supply is inadequate (RT 83). Another house was under construction at the time of the hearing and will be entirely dependent on the unnamed stream for its water supply (RT 81). Plans to build the other three houses are not definite as to time (RT 83). The existing two houses will require about 1,000 gpd.

Unappropriated Water

6. Unappropriated water is available to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

7. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 24243 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.



ORDER

IT IS HEREBY ORDERED that Application 24243 be approved and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 2,000 gallons per day by direct diversion from January 1 to December 31 of each year. The maximum amount diverted under this permit shall not exceed three acre-feet per year.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before two years from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1981.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1982.

6. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. Pursuant to California Water Code Section 100, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent

waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversion so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

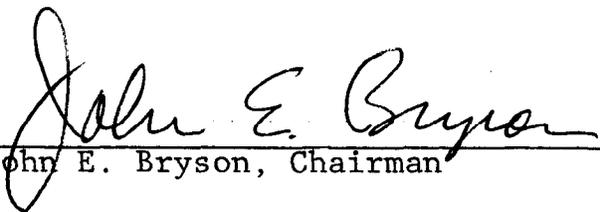
8. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant

to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

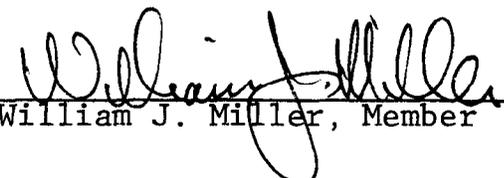
9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

10. Rights under this permit are, and shall be, subject to existing rights determined by the Soquel Creek Adjudication, Superior Court, Santa Cruz County, No. 57081 insofar as said adjudicated rights are maintained and such other rights as may presently exist.

Dated: NOV 16 1978

  
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John E. Bryson, Chairman

  
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W. Don Maughan, Vice Chairman

  
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William J. Miller, Member

  
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L. L. Mitchell, Member

